IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9072 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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G S R T C

Versus

PRAHLADBHAI H PRAJAPATI

Appearance:

1. Special Civil Application No. 9072 of 1994
MR YOGESH S LAKHANI for Petitioner No. 1
NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 01/04/2002

ORAL JUDGEMENT

Heard Mr.Y.S.Lakhani, learned advocate appearing on behalf of the petitioner.

Though, Notice of Rule has been served on the

respondent workman, none remained present on behalf of the respondent. It seems that no advocate is engaged by the respondent on his behalf in this proceeding and therefore, this matter is taken up for final hearing even in absence of the respondent.

The petitioner Corporation has challenged the award passed by the Industrial Tribunal, Ahmedabad in Reference No.44 / 1990 dated 1st November, 1993, wherein the Industrial Tribunal has set aside the order of punishment dated 28th October, 1985 and granted benefits as consequences thereof to the respondent workman. Learned advocate Mr.Lakhani appearing on behalf of the petitioner Corporation has submitted that the Industrial Tribunal has in terms come to the conclusion that charge levelled against the respondent workman is found to be proved and dishonesty is also found to be proved against the respondent before the tribunal and in spite of the fact that the tribunal has come to the conclusion that serious misconduct has been committed by the respondent workman and therefore defence of the respondent workman is not believed by the tribunal, even though only on the technical ground that Clause 22 and 27 of the S.T.Discipline Appeal Procedure which is not applicable to the allegation and therefore, the order in question has been set aside. Therefore, learned advocate Mr.Lakhani has submitted that if the misconduct is found to be proved and the same is considered as serious misconduct by the tribunal, in that case, the award passed by the tribunal requires to be quashed and set aside by this Court.

I have considered submissions of learned advocate Mr.Lakhani for petitioner. Learned advocate Mr.Lakhani is right to submit that the industrial tribunal has in terms come to the conclusion that charge levelled against the respondent workman is found proved. The allegation which has been made against the respondent workman is serious to the effect that this charge has been admitted by the respondent workman. On 2nd September, 1995, he was chargesheeted by the competent authority of Palanpur Division on the basis of the report dated 5th August, 1985. According to the corporation, incident involved occurred on 3rd January, 1985 when the respondent workman on duty as Conductor of S.T. Bus bearing registration 5494 of local route Unja to Karli and when it reached at Karli bus stand at about 10.10 A.M. it was checked by the members of the Line Checking squad and they detected the default committed by the workman in connection with non issuance of the tickets to the passengers and so he in order to absolve himself from his liability in

connection with the default got the original way bill No.248042 issued to him lost and at the time of crediting collection amount of bus fare during the trips to the Cashier, he replaced or substituted the same by another way bill of series No.2480 after tearing off last two digits portion at two places after preparing a false bill and therefore, this aforesaid act amounted to misconduct as provided in the procedure. The tribunal has examined that looking to the material on record, can be concluded that the charge against the respondent workman was established. Ultimately, the tribunal has come to the conclusion that looking to the aforesaid clinching circumstances which emanate from the above material lead to the only conclusion that this mischief must have been played by the concerned workman and none else and that was with the an oblique motive to help him in his defence in that default case for not issuing the tickets to passengers of different groups at the instance of the Driver of that bus as those passengers were known to that Driver and they sat in the cabin of driver and in the remarks column also such facts were mentioned with a view to help him in his defence and even hand writing and signatures of the reporter were forged while writing and signing such remarks in the relevant column of the way bill. It is also observed that these circumstances would also go to show that barring the concerned workman none else would be interested in fabricating such false evidence nor anyone else would be knowing those facts about it and such act of tearing off the last two digits of the printed way bill was done because first four digits were of same series and after scoring out those numbers of original way bill number is sued to him was written with a ball pen at those two places. Thus, according to the material on record clearly led to the only conclusion that the aforesaid default was committed by the concerned workman and non else. The tribunal has also observed that even in explanation offered by the concerned workman regarding the same, is neither reasonable nor plausible but palpably a false one and therefore the tribunal was not inclined to accept statement of the respondent workman and further concluded that the competent authority was perfectly justified in not accepting the explanation and he rightly came to the conclusion that the concerned workman committed aforesaid default. Thereafter, the tribunal has examined further that this allegation made against the workman in chargesheet would not be sufficient to constitute an act of misconducts as provided in Clause 22 and 27 of the procedure. It is further observed that Clause 22 provides that repeated or continued breach of any notified administrative circulars or order is an act of

misconduct and therefore, the tribunal has not examined the earlier incidents as mentioned in the chargesheet and therefore the tribunal has observed that the concerned workman requires to be exonerated in respect of the charge for contravening clauses 22 and 27 of the procedure.

In light of abovestated facts, in view of this Court, the view taken by the tribunal is technical. If there was some applicability of the Clauses of S.T.Procedure to the misconduct in question, that cannot be considered that the entire punishment is required to be set aside on mere technical ground. The tribunal has considered the substance of the matter and the charge is considered to be serious, which is found to be proved. It is also pertinent to note that the tribunal has reappreciated the evidence and come to the conclusion that charge against the respondent workman was found to have proved. Even explanation given by the workman was not believed and the tribunal further concluded that the competent authority had rightly not believed the statement of the workman. Thus, it is concluded by the tribunal that the competent authority was justified in not accepting the statement and defence of the respondent workman. Therefore, according to my opinion, the tribunal has committed gross error in coming to the conclusion relying upon ingredients of Clause 22 and 27 and only on such technical ground set aside the punishment order when the merits of the matter is entirely against the respondent workman. In such situation, when serious charge has been found to have proved by the competent authority and the same is found to have proved even before the tribunal, then there was no necessity to set aside the punishment order by the tribunal only on the ground that particular Clauses 22 and 27 are not applicable to the misconduct as charged against the workman. Therefore, there is clear error apparently found on the face of the record committed by the tribunal and hence, interference of this Court under Article 226 and 227 of the Constitution is called for in the interest of justice.

In view of above discussion, present petition is allowed. The award in question passed by the Industrial Tribunal concerned in Reference No.44 / 1990 dated 1st November, 1993 is hereby quashed and set aside. Rule is made absolute accordingly. No order as to costs. Direct Service is permitted.

Date : 1-4-2002 [H.K.RATHOD, J.]

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